No. 01 1379

Supreme Court, U.S.
FILED
MAY 15 2002
OFFICE OF THE CLERK

In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL,
individually and as personal representative
of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari
to the Delaware Supreme Court

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

Pro se

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

12 pg

QUESTION PRESENTED FOR REVIEW

The question remains as outlined in Petitioners Brief. The record supports, undoubtedly, that the Respondent's Attorney, David J. Ferry, Jr., made a sworn affidavit September 16, 1999 that was not truthful to counteract overwhelming evidence in the record validating his deception and fraud on the Court. Even though he recanted his sworn affidavit, it was too late to prevent all of the additional inordinate Rule violations committed by the rest of the Court. By ignoring the Rules, followed with a pattern of deception, the Courts failure to Rule on pivotal points of law and wrongdoing, has transformed a civil case filed August 1995, for an accounting, into a criminal matter.

"Did the Supreme Court of the State of Delaware violate Petitioners' 14th Amendment Constitutional rights and commit reversible error when it affirmed the Delaware Court of Chancery's entry of a default judgment against Petitioner, when Respondent's attorney later admits that he committed a fraud on the court when he certified that he had personally served Petitioners a copy of the Complaint according to Court rules, and now admits to perjury?"

PARTIES TO THE PROCEEDINGS

The Spanagels filed an appeal *pro se,* October 31, 2000, S.C.No.523, 2000; however, they could not continue. January 2001, Mr. Spanagel was hospitalized, and died February 2, 2001. Petitioners were blessed to hire a truly ethical professional attorney, Caroline Patricia Ayres, to take over at this difficult time. However, her service was limited because the events of September 11th affected her family, and Petitioners required another counsel to take over.

David Ferry freely and openly disregarded Court rules, as though they were never applicable to him. The irony is that Mr. Ferry intentionally ignored the most important rules; those addressing service and written requests for a hearing. Not only was the Complaint, The Motion For Default Judgment, (actually an Order To Show Cause Ferry submitted by mistake to beat Petitioners Answer to the Complaint. Mr. Ferry knew on March 1, 1996 from Phillips that his Answer would be filed Monday, March 4 on behalf of the Petitioners) and the Motion For Substitution Of Parties filed by Ferry, were never served upon Defendants according to Court of Chancery Rule 25(a). This rule specifically provides in pertinent part that: "[T]he Court may order substitution of the proper parties.....The motion... together with the notice of hearing , shall be served on the parties as provided in Rule 5..."

In this case, the Court is the only entity that can permit a substitution of parties. No such order was ever entered in the present case. Furthermore, in complete disregard for the Rules,

Ferry never requested a hearing date on his request for substitution of parties, or served such a request upon Petitioners. In fact, no hearing date was requested for the Order To Show Cause, interpreted to be a Default Judgment, and signed by Vice Chancellor Jacobs Monday morning, March 4, 1996, less than a four hour window from receipt at the court.

Failure to follow substitution of party rules must lead to dismissal of Respondent's claims, as there is no longer a party in interest appointed by the Court to pursue these claims. See Tiffany v. O'Toole Realty Co., Del. Super., 153 A.2d 195 (1959). In Tiffany, the husband's claims were dismissed because he neglected to follow court rules dealing with substitution of parties. The Court below erred in not so dismissing this case.

The Motion for Substitution, Docket 23 (received by court 4-16-97, 3:33 PM) was filed out of time, more than one year from the date of death (3-12-96) instead of 90 days required by Rule 25. It was no mistake the Motion was never signed, as it would be illegal, and no hearing was offered. Two people have been constant in this case: David J. Ferry, Jr., Attorney for Respondent and Vice Chancellor Jack B. Jacobs. Richard S. Phillips, was engaged March 1, 1996, Attorney for Petitioners. Joseph F. Flickinger III, Register of Wills, gave John H. Williams, Jr., March 7, 1997 Letters of Ancilliary Administration With The Will Annexed. Almost one year earlier, Walter P. McEvilly, Jr., Esquire, sent a photocopy of Mrs. Brugmann's Will with an undated Codicil, and various other documents with conflicting dates, by letter of May 16, 1996 to Mr. Flickinger. The estate was opened with an

unproved and photocopied Will, an undated Codicil, and no Certified Copy of the Death Certificate. March 13, 1997, Joseph F. Flickinger III, withdrew Letters of Ancilliary Administration With The Will Annexed, and issued Letters of Administration. XIX. Probate Procedures, Rule 188 was violated when Joseph F. Flickinger III appointed John H. Williams, Jr. Rule 189 [No petition for Letters Testamentary or Letters of Administration with will Annexed shall be filed with the Register of Wills until the will has been proved] Mrs. Brugmann's Will was never proved when Mr. Williams appointed. Also, Rules 191, 194, 195, 197, 198 and 202 were subsequently violated.

The Respondent is mistaken when he stated, "Mr. Williams appointment was never challenged." Mrs. Brugmann's Will specifically stated Robert J. Spanagel as her Executor, and if unwilling or unable to serve, her personal attorney, Darrell J. Baker was to serve in his place.

Two notes in the file read: "This is one of V. C. Jacobs cases. Do Not Docket". One note was signed by Jean, Vice Chancellor Jacobs' secretary. Besides letters and faxes submitted directly to V. C. Jacobs during periods when Petitioners were *pro se* that were not docketed, letters and faxes submitted by their counsel also was not docketed; regardless of the fact, on two occasions, the very same method of presentation was also used by Respondent. Respondent was successful having his material docketed, while Petitioners were not, thereby the record was not complete in the trial court.

This bad faith fraudulent litigation, coupled with the destruction of Petitioners good names and life, ultimately attacking reputable lawyers and their firm; namely Heiman & Aber and Darrell J. Baker by Respondents counsel to bolster their weak claim, so they could pilfer our house and personal property, is criminal.

Neither the 14th Amendment of the U. S. Constitution or the Delaware Constitution permits legal action without proper notice, and an opportunity to be heard. In failing to properly serve the Spanagels with the Complaint, the Motion For Default Judgment (actually not a Motion, rather just a document labeled "Order to Show Cause" interpreted as a Default Judgment by the trial judge) and Motion For Substitution Of Parties, the Spanagels were denied their due process rights, as well as an opportunity to be heard. Also, Ferry's deliberate intentional disregard for Rule 25, violates not only the 14th Amendment to the U. S. Constitution, but also the Delaware Constitution, Article IV, Section 23, regarding the proper procedure for survival of actions after death.

STATEMENT OF THE CASE

Statement of the case remains the same as outlined in Petitioner's Brief. Because of the numerous misstatements and events reported out of context in the Respondent's Brief in Opposition, the following corrections are necessary due to the chronic effort to discredit Petitioners; rather than report the facts:

Page 1 Respondent misleads the court implying the Spanagels had some association with Mrs. Brugmann, as if we just came into her life since her husband died in 1986. Spanagels relationship was life long starting in 1920, and referred to as Aunt Aline.

Page 2 Respondent again misleads by stating: [The Spanagels placed Mrs. Brugmann in the Forwood Manor Nursing Home in April of 1991] when the fact is she was not placed, she signed herself into a luxury retirement apartment. The facility, Forum Retirement Communities had very limited nursing beds, and no one gets placed except a resident. Because the beds were very limited and reserved for patients paying around $5,000, there were problems getting a Medicare/Medicaid bed. Petitioner believes Executive Director, Russell DiGilio wanted Mrs. Spanagel to leave his office and get a lawyer at their first meeting March 13, 1995, for this reason.

Page 3 Here Respondent wants you to believe SCS also sent letters and notices to the Spanagels at Paw Paw Lane (invalid address in Cambridge, MD) Fact is SCS never sent the Spanagels a notice. There was no reason to, as they hired Ferry.

July 27, 1995, SCS mailed one letter to the Spanagels and got the address correct; something the Court and Respondent never did until the year after complaint filed.

Page 4 Respondent claims he mailed a five page complaint, plus a summons (not even issued yet) and cover letter first class (1oz. & under) in an envelope with 32 cents postage. This is impossible, and the record supports it. Again, he misleads the Court alleging Darrell J. Baker represented us in this case. He was specifically told Mr. Baker would not take on additional representation due to potential conflict, as he was Mrs. Brugmann's attorney. His help with Superior Court Case 95-05-102 was a compassionate courtesy due to open heart surgery in N.Y., and Mr. Ferry knew this, but, he continues to mislead the Court.

Page 5 Misrepresentations throughout the page, especially the part where he claims he hired a process server and the Spanagels were served. A part-time security guard was employed, with no authority from the Courts, and 179 days after the complaint was filed, delivered copies of the complaint only to Rose Marie Spanagel. The affidavit he filed says so, therefore, the trial judge and Supreme Court stated in their opinions, "the Spanagels were served". One misrepresentation after another. The chronic pattern of ignoring the Rules, and claiming they were followed is endless.

Page 6 Again, to mislead the Court, Ferry writes four times "the Spanagels" instead of Spanagels Attorney, Richard S. Phillips, so it reads out of context. The accounting was delivered to the Court August 20, 1998 for a hearing. Vice Chancellor Jacobs did not permit the accounting or the Spanagels in the Court. John Williams removed personal

records from the accounting boxes, and we were told we should be glad the Chancellor did not want to see us, as he puts people in jail who mess with deeds. Not one lawyer glanced at the accounting reformatted for the hearing.

Page 7 Four witnesses testified for the Respondents, and Darrell J. Baker, was called by Petitioners lawyer, Larry Sullivan. Again, the Spanagels is used instead of The Spanagels lawyer, Larry Sullivan who failed to file a memorandum, as he was told not to.

Page 8 Here again, the Spanagels should read, the Spanagels lawyer, Douglas A. Shachtman so it doesn't read out of context. **Mrs. Spanagel** has never testified and it took almost 5 years for Mr. Spanagel to testify the **first time** December 20, 1999.

Page 9 Here Ferry contradicts himself to make it look as though the Spanagels disobeyed an order. Not True. On Page 2, 1st Paragraph, last sentence Mr. Ferry has it right. To say Posatko never received any information....Misleading again. On July 27, 1995 he wrote one letter, and never specified any time frame, then 20 days later, files suit August 18, 1995.

Page 10 Completely out of context. Baker was Brugmann's attorney, and never represented Spanagel in this case. Ferry knows this, yet, he continues to deceive.

Page 11 Again, by writing the Spanagels here instead of **Mr. Spanagel**, misleads.

Page 12 Here the Court heard testimony the Brugmann/Spanagel agreement was cleared up with the last check dated 4-2-90, No. 2685 for $4,500; and they had a copy of the canceled check. It made no difference, the case crawled on, rather than the Court admit to a mistake.

Page 13 Mrs. Brugmann had counsel at the sale of her house and the Court knew this.

Page 14 More misstatements and misrepresentations.

Page 15 By denying Petitioners due process, there is no problem for the Court. Only one mistake is in Petition. Page 10, a typo error. SCS letter of 7-27-95 was listed as 7-25-95.

Page 16, 17, 18 and 19 1st Paragraph "the Spanagels had notice... Phillips and our next attorney, Lawrence Sullivan both told us the complaint was not filed properly. After they talked with Ferry, the story changed. They were told to back-off. This was a simple case for accounting, and it was available from the start. No Petitioner should have to hire four law firms, five attorneys in the lower court, and then two more law firms in an attempt for justice in the Delaware Supreme Court. The Courts "Gamesmanship" from the beginning to the end in Delaware's system of justice was approved by the very people we expect justice from. Clearly, this issue was raised in our first Pleading, and medical incompetence documented as well. If the court disagrees, an opinion should be rendered on the first two Pleadings made by Petitioners. There simply is no right way to do a wrong thing.

CONCLUSION

The Spanagels pray that this Honorable Court not turn its back to the intentional wrongdoing committed on them and the Court below. To do otherwise, would mean that it is impossible for small town people like the Spanagels to receive the protections of Constitutional laws and rules that were drafted to prevent the very fraud that Mr. Ferry was freely permitted to accomplish at the Court below. Mr. Ferry's misrepresentations to the Court have cost the Spanagels everything, including the life of Mr. Spanagel, who perished amidst the stress of a Court system that would rather listen to false statements than true documented facts. Ferry ironically argues that the Spanagels did not comply with the technical rules in objecting to service. At the same time, when his back was up against the wall, Ferry finally admits the truth that he did not follow the technical rules of service, either. If Ferry's argument stands, than justice falls in this case and every case where success is obtained through misrepresentation and deceit.

Respectfully submitted,

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009